

ASSEMBLY BILL

No. 987

Introduced by Assembly Member Jones

February 22, 2007

An act to amend Section 33334.3 of the Health and Safety Code, relating to housing.

LEGISLATIVE COUNSEL'S DIGEST

AB 987, as introduced, Jones. Low and Moderate Income Housing Fund: affordability covenants and restrictions.

The Community Redevelopment Law requires that not less than 20% of the tax-increment revenue allocated to a redevelopment agency be used to increase, improve, and preserve the supply of the community's low- and moderate-income housing within the territorial jurisdiction of the agency, and for this purpose, the funds are held in a separate Low and Moderate Income Housing Fund.

The Community Redevelopment Law requires that all new or substantially rehabilitated housing units developed or otherwise assisted with moneys from the Low and Moderate Income Housing Fund pursuant to an agreement approved by an agency on or after January 1, 1988, remain available at affordable housing cost to, and occupied by, persons and families of low or moderate income and very low income and extremely low income households for the longest feasible time, but for not less than specified periods of time, except as specified. Existing law requires the agency to record these covenants and restrictions in the office of the county recorder for each parcel or unit that is subject to these provisions. Existing law requires the covenants and restrictions to run with the land and be enforceable against the original owner and successors in interest by the agency or the community.

This bill, additionally, would require the covenants and restrictions to be enforceable by any person or family of low or moderate income, as defined.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 33334.3 of the Health and Safety Code
2 is amended to read:

3 33334.3. (a) The funds that are required by Section 33334.2
4 or 33334.6 to be used for the purposes of increasing~~and~~,
5 improving, *and preserving* the community's supply of low- and
6 moderate-income housing shall be held in a separate Low and
7 Moderate Income Housing Fund until used.

8 (b) Any interest earned by the Low and Moderate Income
9 Housing Fund and any repayments or other income to the agency
10 for loans, advances, or grants, of any kind from the Low and
11 Moderate Income Housing Fund, shall accrue to, and be deposited
12 in, the fund and may only be used in the manner prescribed for the
13 Low and Moderate Income Housing Fund.

14 (c) The moneys in the Low and Moderate Income Housing Fund
15 shall be used to increase, improve, and preserve the supply of low-
16 and moderate-income housing within the territorial jurisdiction of
17 the agency.

18 (d) It is the intent of the Legislature that the Low and Moderate
19 Income Housing Fund be used to the maximum extent possible to
20 defray the costs of production, improvement, and preservation of
21 low- and moderate-income housing and that the amount of money
22 spent for planning and general administrative activities associated
23 with the development, improvement, and preservation of that
24 housing not be disproportionate to the amount actually spent for
25 the costs of production, improvement, or preservation of that
26 housing. The agency shall determine annually that the planning
27 and administrative expenses are necessary for the production,
28 improvement, or preservation of low- and moderate-income
29 housing.

30 (e) (1) Planning and general administrative costs which may
31 be paid with moneys from the Low and Moderate Income Housing
32 Fund are those expenses incurred by the agency which are directly

1 related to the programs and activities authorized under subdivision
2 (e) of Section 33334.2 and are limited to the following:

3 (A) Costs incurred for salaries, wages, and related costs of the
4 agency's staff or for services provided through interagency
5 agreements, and agreements with contractors, including usual
6 indirect costs related thereto.

7 (B) Costs incurred by a nonprofit corporation which are not
8 directly attributable to a specific project.

9 (2) Legal, architectural, and engineering costs and other salaries,
10 wages, and costs directly related to the planning and execution of
11 a specific project ~~which~~ *that* are authorized under subdivision (e)
12 of Section 33334.2 and ~~which~~ *that* are incurred by a nonprofit
13 housing sponsor are not planning and administrative costs for the
14 purposes of this section, but are instead project costs.

15 (f) (1) The requirements of this subdivision apply to all new or
16 substantially rehabilitated housing units developed or otherwise
17 assisted, with moneys from the Low and Moderate Income Housing
18 Fund, pursuant to an agreement approved by an agency on or after
19 January 1, 1988. Except to the extent *that* a longer period of time
20 may be required by other provisions of law, the agency shall require
21 that housing units subject to this subdivision shall remain available
22 at affordable housing cost to, and occupied by, persons and families
23 of low or moderate income and very low income and extremely
24 low income households for the longest feasible time, but for not
25 less than the following periods of time:

26 (A) Fifty-five years for rental units. However, the agency may
27 replace rental units with equally affordable and comparable rental
28 units in another location within the community if ~~(A)~~ (i) the
29 replacement units are available for occupancy prior to the
30 displacement of any persons and families of low or moderate
31 income residing in the units to be replaced and ~~(B)~~ (ii) the
32 comparable replacement units are not developed with moneys from
33 the Low and Moderate Income Housing Fund.

34 (B) Forty-five years for owner-occupied units. However, the
35 agency may permit sales of owner-occupied units prior to the
36 expiration of the 45-year period for a price in excess of that
37 otherwise permitted under this subdivision pursuant to an adopted
38 program which protects the agency's investment of moneys from
39 the Low and Moderate Income Housing Fund, including, but not
40 limited to, an equity sharing program which establishes a schedule

1 of equity sharing that permits retention by the seller of a portion
2 of those excess proceeds based on the length of occupancy. The
3 remainder of the excess proceeds of the sale shall be allocated to
4 the agency and deposited in the Low and Moderate Income
5 Housing Fund. Only the units originally assisted by the agency
6 shall be counted towards the agency's obligations under Section
7 33413.

8 (C) If land on which those dwelling units are located is deleted
9 from the project area, the agency shall continue to require that
10 those units remain affordable as specified in this subdivision.

11 (2) The agency shall require the recording in the office of the
12 county recorder of covenants or restrictions implementing this
13 subdivision for each parcel, *lot*, or unit of real property subject to
14 this subdivision. Notwithstanding any other provision of law, the
15 covenants or restrictions shall run with the land and shall be
16 enforceable; against the original owner and ~~successors~~ *each*
17 *successor* in interest, by the agency ~~or~~, the community, *or any*
18 *person of family or low or moderate income, as defined in Section*
19 *50093*.

20 (g) "Housing," as used in this section, includes residential hotels,
21 as defined in subdivision (k) of Section 37912. The definitions of
22 "lower income households," "very low income households," and
23 "extremely low income households" in Sections 50079.5, 50105,
24 and 50106 shall apply to this section. "Longest feasible time," as
25 used in this section, includes, but is not limited to, unlimited
26 duration.

27 (h) "Increasing, improving, and preserving the community's
28 supply of low- and moderate-income housing," as used in this
29 section and in Section 33334.2, includes the preservation of rental
30 housing units assisted by federal, state, or local government on the
31 condition that units remain affordable to, and occupied by, low-
32 and moderate-income households, including extremely low and
33 very low income households, for the longest feasible time, but not
34 less than 55 years, beyond the date the subsidies and use restrictions
35 could be terminated and the assisted housing units converted to
36 market rate rentals. In preserving these units the agency shall
37 require that the units remain affordable to, and occupied by, persons
38 and families of low- and moderate-income and extremely low and
39 very low income households for the longest feasible time but not
40 less than 55 years. However, the agency may replace rental units

1 with equally affordable and comparable rental units in another
2 location within the community if (1) the replacement units in
3 another location are available for occupancy prior to the
4 displacement of any persons and families of low or moderate
5 income residing in the units to be replaced and (2) the comparable
6 replacement units are not developed with moneys from the Low
7 and Moderate Income Housing Fund.

8 (i) Agencies that have more than one project area may satisfy
9 the requirements of Sections 33334.2 and 33334.6 and of this
10 section by allocating, in any fiscal year, less than 20 percent in
11 one project area, if the difference between the amount allocated
12 and the 20 percent required is instead allocated, in that same fiscal
13 year, to the Low and Moderate Income Housing Fund from tax
14 increment revenues from other project areas. Prior to allocating
15 funds pursuant to this subdivision, the agency shall make the
16 finding required by subdivision (g) of Section 33334.2.

17 (j) Funds from the Low and Moderate Income Housing Fund
18 shall not be used to the extent that other reasonable means of
19 private or commercial financing of the new or substantially
20 rehabilitated units at the same level of affordability and quantity
21 are reasonably available to the agency or to the owner of the units.
22 Prior to the expenditure of funds from the Low and Moderate
23 Income Housing Fund for new or substantially rehabilitated
24 housing units, where those funds will exceed 50 percent of the
25 cost of producing the units, the agency shall find, based on
26 substantial evidence, that the use of the funds is necessary because
27 the agency or owner of the units has made a good faith attempt
28 but been unable to obtain commercial or private means of financing
29 the units at the same level of affordability and quantity.